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February 13, 2003

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Federal Communications Commission  
Office of the Secretary

Honorable Michael K. Powell, Chairman  
 Honorable Kathleen Abernathy, Commissioner  
 Honorable Michael Copps, Commissioner  
 Honorable Kevin Martin, Commissioner  
 Honorable Jonathan Adelstein, Commissioner  
 Federal Communications Commission  
 445 12th Street SW  
 Washington, DC 20554

Re: **Ex Parte**  
**CC Docket Nos. 01-338, 96-98, and 98-147**

Dear Chairman Powell and Commissioners:

I, the undersigned chief executive officer of a competitive provider of local telecommunications services, have reviewed the **network** element unbundling principles and standards set forth by the National Association of Regulatory Utility Commissioners ("NARUC") in their February 6, 2003 letter filed in this proceeding.<sup>1</sup> I am writing to express my full and unequivocal support for the NAKUC framework.

Our industry has invested billions of dollars in infrastructure, and have led the way in deploying innovative local telecommunications services to millions of consumers throughout the United States. Our business plans have been developed in reliance upon the twin promises of the 1996 Telecommunications Act and state and federal unbundling rules. I believe that the NAKUC framework would allow **our** industry a **fair** and **reasonable** chance to continue to provide competitive offerings to the millions of residences and small business consumers that have come to rely upon them. By adopting the NAKUC framework, the Commission can achieve its complementary objectives of establishing a pro-competitive deregulatory unbundling framework and creating an unbundling regime that complies with the D.C. Circuit's decision in *USTA*,<sup>2</sup> which demands that the Commission's unbundling rules be the result of a fact-specific inquiry.

The NAKUC framework calls for the Commission to promulgate the baseline Section 251 impairment test applicable to **all** elements. State commissions, in **turn**, will be charged with applying the Commission's impairment standard to all elements, and must remove from the list

<sup>1</sup> See Letter from David Svanda, NAKUC President and Michigan Commissioner, *et al.* to Chairman Powell (Feb. 6, 2003).

<sup>2</sup> *USTA v. FCC*, 290 F.3d 415, 422 (D.C. Cir. 2002) ("*USTA*").

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Federal Communications Commission  
Office of Secretary

Honorable Michael K. Powell, et al  
February 11, 2003  
Page 2

those UNEs where it is demonstrated that no impairment exists. By properly placing the fact-finding and decision-making burdens upon state commissions, the NARUC framework allows the Commission to respond appropriately to both the Court of Appeals in *USTA*, and the Supreme Court's decision in *Verizon*.<sup>1</sup> Those decisions require that the Commission allow an impairment that allows for detailed, fact-based application of the impairment facts rather than a uniform national rule that applies in every geographic market and customer class. The NARUC framework **allows** state commissions to assess impairment on a market-by-market basis, and tailor the availability of specific network elements — or any necessary transition process — where the state commission finds that market conditions dictate that an element should be removed. Accordingly, the regime contemplated by NARUC ensures that competitive conditions most conducive to continued facilities investment and vibrant competition **are** fostered.

At bottom, the NARUC framework will promote the continued growth and expansion of local competition by ensuring that innovative services are available to all consumers — including mass-market residential and small business customers — throughout the country. Any plan that would adopt a "one size fits all" national unbundling regime would not only be contrary to the requirements of *USTA*, but would effectively unhinge the efforts of entrepreneurs and innovators in the competitive telecom sector.

**Accordingly, we respectfully urge you to adopt the canpromiseframework submitted by NARUC on February 6.**

Sincerely,